

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jan 09, 2024

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ISMAEL CANTU,

Plaintiff,

v.

STATE OF WASHINGTON and
YAKIMA COUNTY JAIL MEDICAL
DEPARTMENT,

Defendants.

No. 1:23-CV-03129-SAB

ORDER DISMISSING ACTION

By Order dated November 29, 2023, the Court advised Plaintiff of the deficiencies of his First Amended Complaint and directed him to amend or voluntarily dismiss within thirty days. ECF No. 9. In that Order, the Court instructed that Plaintiff did not name as a Defendant any person amenable to suit under 42 U.S.C. § 1983. *Id.* at 2–3, 5–9. The Court also noted that Plaintiff failed to comply with Rule 8(a)(2) of the Federal Rules of Civil Procedure, which requires that a complaint contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” *Id.* at 5. Further, the Court determined that Plaintiff’s assertions that many of his grievances and kites were either ignored or denied, or he received unfavorable responses, were insufficient to state a claim

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1 upon which relief may be granted. *Id.* at 8–9. The Court also determined that
2 Plaintiff’s assertions that a named Defendant violated his speedy trial rights,
3 responded to the COVID-19 pandemic with deliberate indifference, or failed to
4 provide adequate dental care, were insufficient to state a claim upon which relief
5 may be granted. *Id.* at 6–8.

6 Although granted the opportunity to do so, Plaintiff did not amend his
7 complaint to state a claim upon which relief may be granted. The Court cautioned
8 Plaintiff that the failure to amend or voluntarily dismiss would result in the
9 dismissal of his First Amended Complaint. ECF No. 9 at 10–12.

10 For the reasons set forth in the Court’s Second Order to Amend or
11 Voluntarily Dismiss Complaint, ECF No. 9, Plaintiff’s First Amended Complaint,
12 ECF No. 7, is **DISMISSED** without prejudice for failure to state a claim against
13 Defendants upon which relief may be granted. 28 U.S.C. §§ 1915A(b)(1) and
14 1915(e)(2).

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Accordingly, **IT IS HEREBY ORDERED:**

1. Plaintiff's First Amended Complaint, **ECF No. 7**, is **DISMISSED without prejudice** for failure to state a claim upon which relief may be granted under 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2).

2. Based on this Court's reading of *Washington v. Los Angeles Cnty. Sheriff's Dep't*, 833 F.3d 1048 (9th Cir. 2016), this dismissal will **NOT** count as a "strike" pursuant to 28 U.S.C. § 1915(g).

3. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of this Order would not be taken in good faith.

IT IS SO ORDERED. The Clerk of Court is directed to enter this Order, enter judgment, provide copies to Plaintiff, and **CLOSE** the file.

DATED this 9th day of January 2024.



Stanley A. Bastian

Stanley A. Bastian
Chief United States District Judge